

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

PALMTREE ACQUISITION
CORPORATION,

No. C-08-3168 EMC

Plaintiff,

ORDER RE SUR-REPLY

v.

MICHAEL R. NEELY, *et al.*,

Defendants.

KIRRBURG CORPORATION, *et al.*,

Third-Party Plaintiffs,

v.

DOROTHY ANDERSON, Trustee of The
Anderson Marital Trust and The Anderson
Tax Deferral Trust,


Third-Party Defendant.

The Trustee has filed a motion to dismiss certain claims asserted in Third-Party Plaintiffs' fourth amended third-party complaint ("FATC"). On October 5, 2011, the Trustee filed a reply brief in support of its motion. In the reply brief, the Trustee raises new arguments that could have been raised in its opening motion. Moreover, it expands the request for relief -- *i.e.*, asking for dismissal of the entire FATC and not simply the two claims initially identified in its opening brief. While the Court should arguably strike the reply brief for those reasons, in the interest of justice, it shall not do

1 so and instead shall give Third-Party Plaintiffs an opportunity to file a sur-reply. Third-Party
2 Plaintiffs have leave to file a sur-reply, not to exceed fifteen pages in length, by October 12, 2011.

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4 IT IS SO ORDERED.

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6 Dated: October 5, 2011

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9 EDWARD M. CHEN
United States District Judge